IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1501 OF 1993

Shri Raosaheb B. Jamkar & Anr. ...Petitioners
V/s.
Suprasmal Nethmal Surana & Ors. ...Respondents

Mr.R.D. Soni for Petitioners.
Ms.R.M. Gadhavi, APP for State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 18, 2006

P.C. :-

. Heard learned Counsel for the petitioners. None appears for the respondents though they are served.

. The petitioners have filed this petition challenging the order of issuance of process by the Metropolitan Magistrate, 28th Court, Esplanade, Bombay, on a complaint filed by the respondent no.1 under Section 138 of the Negotiable Instruments Act, 1881.

2. Respondent No.1 in the said complaint has alleged that a cheque for an amount of Rs.1,10,000/- was issued in favour of the complainant and it was drawn by the Parbhani Peoples Co-operative Bank Ltd. and it was

signed by accused no.2, the alleged applicant which was dishonoured and thereafter, after giving statutory notice, the said complaint was filed. After the process was issued, the present petition was filed.

3. It is contended by the learned Counsel for the petitioners that the said amount of Rs.1,10,000/- was immediately repaid by Demand Draft dated 7th May, 1991 and a covering letter dated 9th May, 1991 was also given alongwith the said cheque. The complainant has confirmed that he has received the said Demand Draft. In this letter, the accused no.1 had specifically mentioned in para 3 that after the entire amount is received, the complaint would withdraw the case which is pending in the Metropolitan Magistrate Courts.

4. The said averment mentioned in this petition has not been denied or controverted by the complainant and though the petition was admitted on 9th January, 1991 and the rule was served on the respondents, neither the complainant nor his counsel appeared in this Court. In the meantime, during the pendency of the writ petition,

the accused no.1 has also gone into liquidation and Official Liquidator has been appointed. The complainant has also lodged its balance claim with the Official Liquidator.

5. In this view of the matter, the writ petition is allowed. The process issued by the Metropolitan Magistrate's Court is quashed and set aside. The Writ Petition is allowed in terms of prayer clause (a) and is made absolute accordingly.

(V.M. KANADE, J.)